



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

September 20, 2021

Mr. Earl Lott, Director
Office of Water (MC-158)
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, TX 78711-3087

Re: Notice of Termination – Permit Review Waiver
Permits for Desalination Facilities, including
Port of Corpus Christi Authority of Nueces County
TPDES Permit No. TX0138347 (WQ0005253000)

Dear Mr. Lott:

This letter regards EPA review of draft permits for desalination facilities, including the draft permit and application (TPDES No. TX0138347, WQ0005253000) for the Port of Corpus Christi Authority of Nueces County ("Port Authority") initially submitted to your office on March 2018. EPA hereby terminates its waiver of review of these draft permits in accordance with Section IV.C.8 of the 2020 Memorandum of Agreement (MOA) between the TCEQ and the EPA concerning the National Pollutant Discharge Elimination System. With regard to TPDES Permit No. TX0138347, the Port Authority proposes to operate a desalination plant to provide an additional water source (potable water) to the surrounding community during drought conditions. Because this facility is classified as a minor by TCEQ, it was not forwarded to EPA for review pursuant to EPA's waiver of review of permits for minor facilities under the MOA. However, the EPA Region 6, is aware of the concerns over TCEQ's permitting process with regard to this permit as well as the impacts of the proposed discharge to aquatic life, the water quality of the receiving waterbody Corpus Christi Bay, and the TCEQ's overall permit development and issuance process. We are aware that a State Office of Administrative Hearing (SOAH) contested case hearing was held July 9, 2020, on the draft permit and application, after which the Administrative Law Judges (ALJs) provided a recommendation for the TCEQ to deny the permit. The TCEQ Commissioners signed an Interim Order, May 26, 2021, filed by the SOAH June 1, 2021, remanding the proposed permit and application back to the SOAH for additional evidence. We also understand the applicant provided additional information, which resulted in a revised application/draft permit/statement of basis, and that a preliminary hearing is to be scheduled in the near future.

As part of our oversight role and responsibility, the EPA continues to be committed in partnering with our state counterparts to ensure the efficiency of the administration of the NPDES permitting program. More specifically, the EPA is to ensure that state issued permits are consistent with the requirements of the Clean Water Act (CWA) and protective of water quality and aquatic life. Therefore, in accordance with Section IV.C.8 of the MOA, which states that "EPA does not relinquish the right to petition the

TCEQ for review of a permit action or inaction because of a possible violation of federal or state statutes, rules, and policies. The EPA may terminate a waiver as to future permit actions, in whole or in part, at any time, by sending the TCEQ a written notice of termination," the EPA rescinds its waiver of review of draft permits for desalination facilities, including draft TPDES permit No. TX0138347 (WQ0005253000) and requests the submittal of these draft permits to EPA for review in accordance with Section IV.C.8 of the MOA.

Because the State permitting process with regard to TPDES permit No. TX0138347 has been ongoing for some time, the EPA is requesting not only review of any revised draft permit with regard to this facility, but also documents in TCEQ's files related to the Port Authority's original March 2018 application and the proposed permit submitted to the Commissioners on May 19, 2021, including TCEQ's response to public comments and the ALJs Proposal for Decision following the contested case hearing. See Section IV of the MOA related to EPA's review of TCEQ's permits on appeal and Section III.A.10 of the MOA, which provides that TCEQ files related to TPDES permits will be readily available to EPA. Pursuant to Section VIII.A.6. of the MOA, EPA requests TCEQ forward the above requested information within 10 days of receipt of this letter.

We look forward to working with you and your staff, during this permit issuance process. Feel free to contact me at (214) 665-8138, if you have any questions or have your staff contact Mark Hayes at (214) 665-2705, or EMAIL:hayes.mark@epa.gov.

Sincerely,



Charles W. Maguire
Director
Water Division (WD)

cc (electronic): Robert Sadlier, Deputy Director
Water Quality Division (MC-145)
TCEQ

Matthew Udenenwu, Section Manager
Wastewater Permitting Section (MC-148)
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